

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 3898 of 2005

Bank of India ..Petitioners

vs.

1. Soumitra Avinash Wardekar
and others ..Respondents

Shri Shekhar Shetye with Smt.Swati Deshpande i/b
M/s M.S.Bodhanwala and Co. for petitioners.

Shri Dhananjay Patil i/b Smt.Ruchika Nayyar for
respondents.

**CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
30th June, 2005**

P.C.

1. Rule. Learned Counsel appearing for the
respondents waives service.

2. By consent, rule is made returnable forthwith.

3. By the impugned order the learned Chairperson
of D.R.A.T. rejected the Misc. Appeal filed by
the petitioners herein and confirmed the order of
DRT rejecting the amendment to O.A.No.912 of 2000.

3. O.A.No.912 of 2000 has been preferred by the
petitioner bank inter alia seeking to enforce the
guarantee dated 24th May, 1992 executed by
respondent no.1. The petitioner Bank in the O.A.

has averred that the petitioner has granted credit facility to the Company known as Al Mutaiwie MEP Packaging Industries Ltd. In consideration of the said credit facility the aforesaid guarantee is executed by respondent no.1. It is the case of the Bank that the guarantee annexed to the O.A. covered and guaranteed the repayment of all the amounts payable on behalf of the said Company Al Mutaiwie MEP Packaging Industries Ltd. to the petitioner Bank. Respondent no.1 is also Director of the said Company Al Mutaiwie MEP Packaging Industries Ltd. which has availed of the credit facility from Emirates International Bank Ltd. on the guarantee given by the petitioner. The bank guarantee of the petitioner was invoked by Emirates International Bank Ltd. and accordingly the petitioner had made payment.

4. In the O.A. it has been specifically pleaded that in view of the default in payment by the Company the Letter of Guarantee executed by respondent no.1 was invoked under letter dated 15th September, 1997. This letter of invocation sets out that there was a default in payment of the Company and the Bank has received a claim from Emirates International Bank Ltd. and, therefore, the bank guarantee was being invoked. The correspondence prior to invocation and thereafter

was, however, not annexed to the OA. We may also mention that the pleadings are extremely cryptic and lacking in relevant particulars. There is only a reference to the defaults committed by the Company which is the foundation for the petitioner's claim. It is also seen that respondent no.1 in his written statement made a grievance that the petitioner Bank has not furnished the better and further particulars or disclosed information sought by the defendants.

5. In the above circumstances, the petitioner filed an application for amendment of the O.A. No new case is made out in the amendment application but the same is merely placing on record the detailed nature of the suit transaction and correspondence prior to the O.A. Having perused the averments, pleadings and reliefs claimed in the O.A. as well as amendment application we are of the view that the proposed amendments are not impermissible in law. DRT as well as DRAT proceeded on a wrong premise that by introducing the amendment a new case is made out or a new relief has been sought for. We are satisfied that application was really of clarificatory nature and it was not a case where any new case or reliefs were being asked. In the above circumstances, it is not possible to sustain the impugned orders

passed by DRT and DRAT. The impugned orders are quashed and set aside. The OA shall be allowed to be amended as per the draft amendment subject to payment of cost of Rs.5000/- to be paid within four weeks. Rule is made absolute accordingly.

Learned Counsel appearing for respondents seeks stay of our order. Application is rejected.